

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

60643

FILE: B-185137

DATE: March 16, 1976

MATTER OF: Augmentation Incorporated

98481

DIGEST:

1. Protest by unsuccessful offeror whose proposal was judged technically acceptable is denied since there is no showing that procuring activity acted in arbitrary or capricious manner. Determination of relative desirability and technical adequacy of proposals is within reasonable degree of discretion of procuring agency in absence of clear evidence that agency has acted arbitrarily.
2. Protest based on ground that unsuccessful offeror's proposal should have been selected for cost-type contract because it proposed lowest cost is denied, since selection of higher cost proposal is not arbitrary where decision is based on reasonable assessment of technical proposals and it is concluded that performance by superior technical offeror is worth additional cost involved and will result in performance in manner advantageous to Government.
3. GAO has no authority under Freedom of Information Act, 5 U.S.C. § 552 (1970), to determine what information must be disclosed by other Government agencies.
4. Since record does not establish that procuring activity acted in arbitrary or capricious manner, claim for proposal preparation costs will not be considered.

On March 12, 1975, request for proposals (RFP) No. 5-01008/029 was issued by the National Aeronautics and Space Administration (NASA), Goddard Space Flight Center (GSFC), Greenbelt, Maryland, to provide the personnel, management and supervision to conduct a comprehensive program of occupational medicine and environmental health for GSFC. The RFP requested proposals on a cost-plus-fixed-fee basis to cover a period of performance of 1 year, plus two 1-year options. The closing date for receipt of proposals was April 14, 1975, and Augmentation Incorporated (AI) was one of three concerns that submitted a proposal.

The offerors were advised that the proposals would be evaluated in accordance with NASA Handbook 5103.6 "NASA Source Evaluation Board Manual." The evaluation criteria consisted of three factors: Mission Suitability, Cost, and Other Factors. Mission Suitability was divided into three major categories: (1) Professional Qualifications of Personnel; (2) Technical Approach; and (3) Corporate Management/Organization. The offerors were informed that the relative weights of these categories were such that Professional Qualifications of Personnel was equal to the sum of the other two with Technical Approach weighted more heavily than Corporate Management/Organization.

The Other Factors evaluation criteria included categories such as Business Management Organization and Personnel, Business Systems, Finances, Corporate Experience and Past Performance, Manpower Stability, Safety and Health, and Equal Opportunity.

By letter dated June 27, 1975, National Health Services, Inc. (NHS), and AI were informed that they were within the competitive range and were invited to give oral presentations to the Source Evaluation Board (SEB) on July 9, 1975. By letter of the same date, Applied Science Associates, Inc., the third firm submitting a proposal, was informed that its proposal was deficient and was determined not to be within the competitive range.

At the completion of the oral presentation, each firm was advised that July 16, 1975, was the date best and final offers were due. On July 25, 1975, AI submitted a request to include additional information concerning the commitment of a physician who would be on AI's staff if it received the contract. This additional information was considered a late revision, but was accepted by the acting procurement officer under NASA Procurement Regulation 3.802-4, since it would result in a considerable technical improvement and when combined with AI's cost proposal which was approximately 11 percent lower than NHS's offer would establish an advantage to the Government to consider the proposal. The closing date for receipt of best and final offers was extended to August 12, 1975.

The SEB, after evaluating all the proposals, submitted its findings to the Source Selection Official (SSO) on September 18, 1975. The SSO selected the NHS proposal and summarized his selection as follows:

"I carefully reviewed the Board presentation and the comments of the key personnel involved. It was clear that NHS had submitted a substantially superior technical proposal. On the other hand, A.I.'s technical

proposal was rated marginally acceptable, and the Board reported that A.I. had no prior experience in furnishing environmental health services or preventive, occupational medical services of the type required at Goddard. Accordingly, for these reasons, I selected National Health Services (NHS) for negotiations leading to a contract to provide support services for Comprehensive Occupational Medicine and Environmental Health Programs."

By letter dated October 9, 1975, AI was informed that it was not selected to perform the contract at GSEC. On October 14, 1975, a debriefing was held at the request of AI and the weaknesses of its proposal were discussed. Following the debriefing, on October 17, 1975, a protest was received in our Office.

Counsel for AI contends that the technical evaluation does not truly reflect AI's capability to perform the contract. Specifically, the areas addressed by counsel are (1) the subcategory of Professional Qualifications of Personnel under Mission Suitability; (2) the subcategory of Project Organization under Mission Suitability; (3) the subcategory of Corporate Support Base under Mission Suitability; and (4) the phase-in plan submitted with the proposal. In addition, AI contends that the experience of proposed personnel should be considered as its corporate experience rather than individual experience and that the Other Factors evaluation criteria should have focused on elements indicating corporate stability and not corporate experience. Counsel has also protested the unavailability of certain information requested from NASA. Finally, AI requests its offer preparation costs in the event its protest is denied.

It is not the function of our Office to evaluate proposals or to substitute our judgment for that of the contracting officials by making an independent determination as to which offeror should receive an award. With regard to the relative desirability and technical adequacy of proposals received, it has been the position of our Office that such matters are within a reasonable degree of discretion of the procuring agency in the absence of clear evidence that the agency has acted arbitrarily. Donald N. Humphries & Associates et al., 55 Comp. Gen. 432 (1975), 75-2 CPD 275; and Kirschner Associates, Inc., B-178887, April 10, 1974, 74-1 CPD 182.

Under the subcategory of Professional Qualifications of Personnel under Mission Suitability, AI maintains that the lack of commitment of

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four personnel (one key person and three nonkey people) claimed by NASA was groundless in that AI's proposal committed all personnel and written or verbal commitments were reiterated at the oral presentation.

The RFP stated in part 2 under the paragraph entitled "Personnel" that evidence of a firm commitment to accept employment for personnel not currently employed by the offeror should be provided. AI did not provide this with its proposal, but stated that commitments would be furnished upon request. By letter dated June 27, 1975, AI was requested to submit evidence of a firm commitment for persons not currently employed. AI's response was that commitments would be provided at the oral presentation. The president of AI hand-delivered three commitments letters of the seven letters required to the SEB chairman. The president of AI asserted that all required personnel were in its employ. An audit performed by the Defense Contract Audit Agency showed that as of May 30, 1975, the seven employees proposed by AI were, in fact, not employed by AI contrary to its president's assertion. This was reconfirmed verbally after orals. On July 25, 1975, AI did furnish a commitment letter for the Medical Officer Internist which was accepted by the procurement officer and AI's score was adjusted upward to reflect the commitment. The final evaluation reports indicated that three people remained uncommitted.

The second area of deficiency involved the subcategory of Project Organization under Mission Suitability. This pertained to the areas of backup support for two of the four key personnel. Counsel contends that adequate backup support did exist. The senior nurse was to be supported by the regular nurse. The regular nurse was to be supported by the senior nurse. The senior industrial hygienist was to be supported by the industrial hygienist who was uncommitted. The SEB would not accept a person for backup support who, at the time, remained uncommitted. Also, AI never clarified its Project Organization program to the satisfaction of the SEB. AI was therefore penalized.

The third area in which AI was deficient concerns the subcategory of Corporate Support Base under Mission Suitability. Counsel alleges that an inconsistency exists regarding this subcategory. Counsel was advised at the debriefing that the Corporate Support Base was considered as a part of the Technical Factors element as well as the Other Factors element. AI was considered "marginally acceptable" under the Technical Factors element and "unacceptable" under the Other Factors element. It is AI's contention that NASA improperly excluded the experience of AI's personnel from the Other Factors category.

It appears that AI has confused the Corporate Support Base element of Mission Suitability with the element of Corporate Experience and Past Performance of Other Factors. Corporate Experience and Past Performance was designated as the most important Other Factor. The administrative record states that this determination was made to highlight the fact that the contract was basically a mission contract for nonpersonnel services where the contract is with a company rather than specific people. Contrary to counsel's argument that the RFP was ambiguous on this point, it seems clear that the experience of the firm was what was expected rather than individual experience. The RFP stated:

"Corporate Experience and Past Performance (Contracts & Subcontracts over \$500,000)

"The offeror shall submit a resume of past experience in the field of Occupational Medicine and Environmental Health Program contracts to include number of years of experience in performing a service of this or related type and scope (i.e., at an installation of approximately 4,000 employees). Also included should be a list of current contracts in this field and a list of all contracts completed within the past 2 years. * * *"

The fourth area of consideration concerns AI's phase-in plan. AI claims that, without knowledge of the incumbent contractor's procedures, it was unable to submit a detailed phase-in plan. AI did not specify the approach it intended to use to insure the smooth transition of firms. The SEB found AI's phase-in plan to be weak in that only the key personnel were to begin work at the beginning of the contract and the other technical personnel would begin when determined necessary by the medical director. It was believed this would provide insufficient orientation for the other technical personnel and would result in a disruption of the on-going health programs. The phase-in plan was a separate criterion and was not included in the 1,000 points available under Mission Suitability. The phase-in plan was reduced to a numerical score but was not considered to be a significant discriminator.

AI does not believe that the expenditure of an additional \$250,000 if award is made to NHS by the Government is justified. However, selection of a higher cost proposal is not arbitrary where the decision is based on a reasonable assessment of the technical proposals and the SSO concludes that performance by the superior

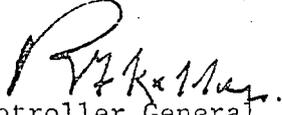
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technical offeror is worth the additional cost involved and will result in performance in a manner advantageous to the Government. See Riggins & Williamson Machine Company, Incorporated, et al., 54 Comp. Gen. 783 (1975), 75-1 CPD 168.

As concerns AI's request for additional documents and information after rejection under the provisions of the Freedom of Information Act (5 U.S.C. § 552 (1970)), it is the position of our Office that we have no authority under the act to determine what information must be disclosed by other Government agencies. DeWitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974), 74-1 CPD 47.

Since the record does not establish that the procuring activity acted in an arbitrary or capricious manner, AI's claim for proposal preparation costs will not be considered. See T&H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345.

Accordingly, we find no basis to object to the award, and the protest is denied.


Deputy Comptroller General
of the United States